

Responsibility of the Mental Health Board

According to **71.924**, the duty of the Mental Health Board is to determine at a hearing whether there is clear and convincing proof that the person before them is a mentally ill and dangerous person.

Further, **71.925** provides that the board must also determine that neither voluntary hospitalization nor less restrictive alternative level of care would prevent harm to themselves or others. The first step in the commitment process is an assessment and clinical decision regarding the presence of mental illness, to which a mental health professional will testify at a hearing. It is important to ask the clinician what other levels of care and services were considered by the treatment team before arriving at the placement recommendation to the board.

If there is a finding of mental illness, the board next makes a legal decision regarding danger to self or others. If criteria for dangerousness are met, a third decision arises, whether commitment to community based/outpatient treatment will satisfy the needs of the person and public safety; or if the choice of last resort, inpatient commitment, is necessary.

The level of evidence needed to make a commitment decision is *clear and convincing evidence*. This is less than the *beyond reasonable doubt* required for a criminal conviction, but more than the *preponderance of the evidence* needed in the usual civil case. The board serves as final decision-maker, determining if a person's civil liberties must be taken from them **temporarily** to protect the person or society in exchange for needed treatment for mental health and/or substance dependency. By questioning the mental health professional, county attorney, defense counsel, and the person themselves, the board will obtain evidence to support a decision: (1) for release; (2) a commitment to a community based service which best meets safety and

treatment needs; or (3) commitment to an acute inpatient service either at a State Regional Center or hospital contracted with one of the six behavioral health regions.

Functioning as a neutral fact-finder in a legal court proceeding where civil justice is dispensed, board members have judicial immunity from potential liability.